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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of:

MM DOCKET NO. 94-71

SANTA MONICA COMMUNITY COLLEGE
DISTRICT

For Construction Permit for a
New Noncommercial FM Station
on Channel 204B in Mojave, California

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MM Docket No. 94-71

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The above-entitled matter came on for conference
pursuant to Notice before Joseph Stirmer, Administrative Law
Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom
No. 1, on Tuesday, March 7, 1995, at 9:30 a.m.

APPEARANCES:

On behalf of Santa Monica Community College District:

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On behalf of Chief, Mass Media Bureau:

GARY SCHONMAN
Federal Communications Commission
2025 M Street, NW
Washington, D.C. 20554

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Hearing began: 9:30 a.m.	Hearing Ended: 10:30

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P R O C E E D I N G S

JUDGE STIRMER: Please be seated. Good morning.

This is a prehearing conference on Docket No. 94-71 involving the application of Santa Monica Community College District for construction permit for new noncommercial FM station on -- in Mojave, California. I'd like the appearances. On behalf of Santa Monica?

MR. PAPER: Lew Paper, for Santa Monica.

JUDGE STIRMER: And for the Bureau?

MR. SCHONMAN: Good morning, Your Honor. Gary Schonman on behalf of the Chief, Mass Media Bureau.

JUDGE STIRMER: Very well. Mr. Paper, you requested this conference so why don't you begin?

MR. PAPER: Thank you, Your Honor. First of all, I want to appreciate -- express my appreciation for you scheduling the conference. Just to give you an update as to where we are, the last time we were here we had a discussion about the pendency of Santa Monica's application and the possible conflict with an application filed by KLON. The Bureau was going to review whether or not KLON's application should be processed and designated for hearing, and in the mean time also Santa Monica stated that it would explore the possibility of settling the case, or settling the dispute so to speak with KLON. I would say that since that hearing which I believe was in October, maybe November --

1 JUDGE STIRMER: It was October 21, 1994.

2 MR. PAPER: Well, since then I think that all of
3 here, Mr. Schonman and other members of the Bureau as well as
4 myself and the attorneys and representatives of KLON have
5 expended a considerable amount of time and effort and money
6 trying to find some way to resolve this in a mutually-
7 satisfactory way. Various proposals have been floated by
8 Santa Monica, by KLON and maybe even the Bureau, I can't
9 remember. But certainly everybody has been I think
10 cooperative and tried to look at this to avoid the need for
11 further litigation.

12 The problem is that we keep bumping into various
13 obstacles. One obstacle that just happened most recently for
14 example is KLON made a proposal whereby Santa Monica would
15 switch -- use the same power site that it currently has but
16 switch to a different channel, Channel 219. And the problem
17 with that proposal is that it reduces the coverage that we
18 would have, and the reason that it would reduce the coverage
19 is because another noncommercial station affiliated with USC
20 has, has an application pending which would require a
21 substantial reduction in the coverage. So, that for the
22 moment -- proposal does not seem worthwhile pursuing, although
23 I should add that, you know, I was talking with Pat Mahoney
24 before the hearing and I guess the record should reflect that
25 Ms. Mahoney is here today, and she represents KLON and she --

1 we talked about the possibility of seeing whether some kind of
2 accommodation could be reached with KUSC.

3 But the bottom line of this, Your Honor, for the
4 moment is that we have after more than three months
5 considerable effort been unable to reach a resolution. My
6 thinking -- my concern was the following. It appears that
7 there is a substantial possibility that despite the efforts of
8 the parties to settle, and I want to assure Your Honor that we
9 would continue to try and settle the matter, resolve it in a
10 mutually-satisfactory way if that is possible, but I think
11 there is a possibility despite those good efforts that we
12 won't be able to resolve them, and if we can't resolve it then
13 we're going to have to resolve it through formal litigation or
14 formal procedures some other way. My concern is that the
15 problem is issues are complicated enough and if the thing
16 hangs out there, if this matter hangs out there, that it may
17 become further complicated by the possibility of somebody else
18 filing an application. Somebody else could file an
19 application today, for example, that would conflict with
20 KLON's application or maybe even our application, and then
21 what you'd have is a you'd have a burgeoning problem. So,
22 what I had suggested -- what I would suggest is the following
23 procedure. I would suggest that you go ahead and grant our
24 application. I understand that you had said before in our
25 last conference you did not want to grant an application that

1 was going to be subject to further litigation. Unless we can
2 settle it, and we will try to settle it, that litigation is
3 going to be inevitable.

4 If you grant the application here's what would
5 ensue. At that juncture, KLON if they are still interest in
6 pursuing their application which I presume they will be --
7 well, let me back up. If KLON decides they're not interested
8 which I doubt, but if they should from some fortuity decide
9 that they don't want to abandon it, then there's nothing more
10 to worry about and the grant can become final. If however
11 KLON feels that they want to pursue their application they
12 will of course have an opportunity to appeal the decision
13 because you denied their petition to intervene. If we do it
14 that way what will happen at that juncture is there will be an
15 established procedure for getting the matter to the
16 Commission. The matter can then be certified -- and this
17 issue can then be certified to the Commission and each of the
18 parties, Santa Monica, KLON and the Bureau will have an
19 opportunity to present their arguments after considering
20 everybody else's arguments and the Commission can then decide
21 the matter.

22 The concern I have quite frankly, Your Honor, and
23 I've expressed this to Mr. Schonman, one of the possibilities
24 that was suggested to us in the course of our discussions, one
25 of the options certainly that the Bureau was considering, was

1 perhaps getting some guidance from the Commission on this
2 particular matter because this is not a matter that they have
3 dealt with before. And so since it is -- has some novel
4 aspects to it in the Bureau's mind, they felt that they might
5 not, might not have or might not want to exercise any
6 delegated authority. I think it would be entirely
7 inappropriate for the Bureau to seek Commission guidance on
8 this through an internal Commission procedure whereby they
9 make a presentation to the Commission to the exclusion of the
10 parties, KLON and Santa Monica because the Bureau is a party
11 to this proceeding. And it seems to me that, that whatever
12 comments the Bureau has to make to the Commission about this
13 matter should be on public record and should be available for
14 comment by the other parties.

15 And so therefore the procedure I'm suggesting is one
16 where you could openly acknowledge the, the nature of the
17 issues and so -- and I understand where, where you would be
18 coming from, where normally you don't like to do things this
19 way. But I at this juncture am at a loss for any, any other
20 way to proceed. But to summarize it, the benefit of doing it
21 this way are two-fold it seems to me. One is hopefully it'll
22 cut off anybody else filing any further applications and so
23 the problem such as it is will be confined to us and KLON.
24 And second of all, there will be an established procedure on
25 the record for everybody to make their position known to the

1 Commission and the Commission can render a decision.

2 JUDGE STIRMER: What would you propose that I do?
3 Grant your application --

4 MR. PAPER: Right.

5 JUDGE STIRMER: -- acknowledge the problem with the
6 Long Beach application, rule that in my judgment their
7 application is not mutually exclusive with yours because yours
8 -- your amendment was not a major amendment requiring your
9 return to the processing line since it was filed after
10 designation for hearing and good cause was shown to permit
11 that amendment and deal with it in that fashion?

12 MR. PAPER: Yes.

13 JUDGE STIRMER: And then let the Bureau if they
14 elect to do so appeal it?

15 MR. PAPER: Well --

16 JUDGE STIRMER: Because the other applicant is not a
17 party before me.

18 MR. PAPER: Yeah, but they --

19 JUDGE STIRMER: You would have no right to take
20 issue with my resolution of the case. They would have to
21 intervene at that point I would, I would suspect.

22 MR. PAPER: Well, two things. First of all, you
23 have correctly stated my proposal. Second of all, I think
24 that KLON does have a right to appeal your decision to deny
25 them intervention and so they will get their arguments into

1 the record that way. And I am confident that knowing how the
2 Commission operates that the Commission would be -- accept
3 their briefs. And yes, the Bureau would present its position.
4 The Bureau could say -- the Bureau could take any number of
5 positions but the bottom line is, and this is my guess, Your
6 Honor, from speaking with Mr. Schonman and other members of
7 the Bureau, is that I think that they would want some guidance
8 from the Commission as to what they -- the Commission thinks
9 they should do, and the Bureau can state it in any number of
10 ways. The Bureau can state it without expressing --
11 advocating a position and merely stating the issue, or they
12 can advocate a position. But in either event, the Bureau's
13 position, the Bureau's position will be a matter of public
14 record for us to comment on and for KLON to comment on.

15 And I have -- quite frankly, that's the way it would
16 happen. Everybody who's interested would have an opportunity
17 to participate on the record.

18 JUDGE STIRMER: Let me ask you something,
19 Mr. Schonman. What is the status of the Long Beach
20 application as of this moment? Has it been processed?

21 MR. SCHONMAN: It is still pending. It has not been
22 processed yet. There's been --

23 JUDGE STIRMER: Why, why hasn't that been processed?
24 I mean, that's been pending for quite a while.

25 MR. SCHONMAN: Your Honor, it has been pending

1 | because of the status of this proceeding. We have proceeded
2 | on a course which would allow the parties to settle the case,
3 | where Mr. Paper could have his client amend the application to
4 | remove any potential mutual exclusivity between Long Beach and
5 | Mojave. That has not been successful. But I do have an
6 | alternative solution to this --

7 | JUDGE STIRMER: Well, let me hear it.

8 | MR. SCHONMAN: -- to this proceeding. We have
9 | certainly been studying the situation for several months now
10 | hoping that it would settle. But there is a rules section
11 | which I think speaks directly to the situation that we have
12 | here and that's Section 73.3605(b)(3).

13 | JUDGE STIRMER: Which?

14 | MR. SCHONMAN: (b)(3) of the Commission's rules.
15 | And Your Honor, that rules section is entitled "Retention of
16 | Applications in Hearing Status After Designation for Hearing."
17 | And the subsection which I just cited addresses the situation
18 | which we have here, if I can read it to you. It's rather
19 | short, it's one paragraph. "In any case where a conflict
20 | between applications will be removed by an agreement for an
21 | engineering amendment to an application, the amended
22 | application shall be removed from hearing status upon final
23 | approval of the agreement and acceptance of the amendment."
24 | And to put that rules section into context, what we have in
25 | this proceeding is a case in which Santa Monica amended its

1 application to change channels in order to remove the mutual
2 exclusivity with Living Way Ministries. Your Honor accepted
3 the amendment and granted the other application, the Living
4 Way Ministries application. Your Honor did not grant the
5 Santa Monica application at that time because there was an FAA
6 -- there was FAA approval lacking.

7 I believe that it's incumbent upon Your Honor given
8 the fact that Santa Monica amended its application to remove a
9 conflict that that application, the amended application, must
10 be returned to the processing line so that the Bureau can now
11 process it. In other words, what I'm suggesting, Your Honor,
12 is that pursuant to Section 73.3605 Your Honor issue an order
13 directing Mr. Paper's application back to the Bureau for
14 processing and terminate this proceeding. That is exactly
15 what this rule contemplates.

16 JUDGE STIRMER: But that's not the way the Bureau
17 has interpreted these type of matters in the past is it,
18 Mr. Schonman?

19 MR. SCHONMAN: Your Honor, in the past it has been
20 the practice when an applicant filed an amendment proposing a
21 new channel, it has been the practice of the Bureau to examine
22 that amendment and to advise the presiding judge through
23 formal comments as to whether that amendment would conflict
24 with any other proposals then pending. And it was the
25 practice of the presiding judge, if the presiding judge

1 | accepted the Bureau's comments to accept the amendment and
2 | grant both the amended application as well as the other
3 | pending application with which that had been mutually
4 | exclusive.

5 | JUDGE STIRMER: So that wouldn't be in keeping with
6 | the requirements of this rule.

7 | MR. SCHONMAN: That's exactly right. That would
8 | depart from that practice. The problem develops in a case
9 | such as this where we have an application filed by KLON and
10 | the timing was off. At the time the Bureau filed its comments
11 | with Your Honor advising that there were no conflicts with the
12 | Santa Monica proposal to change frequencies, at that time we
13 | were not, that is, the Bureau was not, aware that there was a
14 | conflict with the KLON application. It takes as I understand
15 | it several weeks for the information from an application that
16 | has been filed to be entered into the Commission's database.
17 | During that intervening time, applications can be filed, just
18 | as KLON filed its application, which would be in conflict.

19 | JUDGE STIRMER: Well, what would you do once you get
20 | their application back?

21 | MR. SCHONMAN: I think the likely result would be
22 | that the Santa Monica application would be placed on a cutoff
23 | list and the Bureau would examine it to see whether other
24 | applications come in and the KLON application would likely be
25 | consolidated with the Mojave application and designated for

1 | hearing.

2 | JUDGE STIRMER: Well, why don't you process that
3 | application now and if you determine that it's mutually
4 | exclusive, why don't you designate it for hearing? Why do I
5 | have to send them back? Why don't you send the other
6 | application to me if that's what's to be done? I mean, we're
7 | not moving the ball forward it doesn't seem to me if I start
8 | sending things backwards.

9 | MR. SCHONMAN: Because I think there's a problem of
10 | notice here. There's a problem that --

11 | JUDGE STIRMER: Well, what do you say to
12 | Mr. Paper's argument that notice does not apply because this
13 | is not a substantial amendment since it's after designation
14 | for hearing and the rules are different between an amendment
15 | before designation and one after designation?

16 | MR. SCHONMAN: Certainly, if his application, his
17 | amendment, that is, had been filed prior to designation it
18 | would have been characterized as a major change requiring a
19 | new file number. There are instances when applicants file
20 | amendments after designation that would constitute -- would
21 | otherwise constitute a major change. But in the California
22 | decision, California Broadcasting Corporation, 90 FCC 2nd at
23 | 800, specifically page 808, the Commission addressed the
24 | problem of amendments that are filed post designation. And
25 | the Commission afforded presiding judges the opportunity to

1 rule on whether a post-designation amendment should be
2 accepted rather than sending the amendment back to the
3 processing line, because to do otherwise would be disruptive
4 to a hearing proceeding.

5 In other words, Your Honor, the rules provide that
6 you can accept an amendment and that's what 73.3522 provides,
7 part (b) provides that if good cause is shown, if all the
8 criteria is satisfied, Your Honor can accept a post-
9 designation amendment. Section 73.3605 takes it a step
10 further. Now that the, now that the amendment has been
11 accepted, what should Your Honor do with the application? And
12 that rules section requires that Your Honor send the amended
13 application back to the processing line.

14 JUDGE STIRMER: But you can see that's never been
15 the practice.

16 MR. SCHONMAN: That has not been the practice. It
17 has not been a problem. It has not been a problem in that, in
18 that the Bureau has advised each presiding judge prior to the,
19 prior to the acceptance of the amendment whether that
20 amendment would be in conflict. It expedited the case for the
21 judge merely to, to accept the amendment and in one fell swoop
22 grant, grant the amended application, but that doesn't work
23 here.

24 JUDGE STIRMER: Well, Mr. Schonman, what benefit is
25 to be derived by sending this application back to the

1 processing line? Why don't you process the application as
2 presently before you on the processing line and determine
3 whether it should be consolidated with this application? That
4 moves the case forward. And if you do it quickly I can get
5 rid of this case quickly too.

6 MR. SCHONMAN: Your Honor, because I think there's a
7 problem of notice with the Santa Monica application. The
8 world has not been put on notice that Santa Monica is
9 proposing to operate on, on its amended channel. I think it
10 has to be sent back to the Bureau to be placed on cutoff. The
11 likely result will be that it will be consolidated with the
12 KLON application, but I think we have a problem of notice.
13 There's never been any notice.

14 JUDGE STIRMER: Well, in the other cases where you
15 accept an amendment, where a judge accepts an amendment
16 changing frequency, is notice given in those cases?

17 MR. SCHONMAN: There was no notice given in those
18 cases.

19 JUDGE STIRMER: So --

20 MR. SCHONMAN: But I don't see, Your Honor, how it
21 would serve the public interest to perpetuate what probably
22 was an improper course. I mean, if it, if it was a mistake
23 there's no reason to perpetuate that. I mean, the rules
24 section 3605 specifically says that the amended application
25 shall be removed from hearing status.

1 JUDGE STIRMER: What do you say to that,
2 Mr. Paper?

3 MR. PAPER: Well, Your Honor, I want -- I probably
4 should preface my remarks by saying I really have appreciated
5 working with Mr. Schonman and I respect his intelligence and
6 his dedication, and I mean this in all sincerity, that he's
7 really genuinely put in a lot of time and effort in trying to
8 help the parties resolve this and try and help all of us reach
9 a mutually-satisfactory solution.

10 But I think what he's proposing now is an outrage.
11 We knew about this -- our proposed settlement with Living Way
12 Ministries a year -- I'm guessing now, I -- pinpoint the time
13 -- about a year before this thing was designated for
14 application. We talked -- we went -- with Living Way we went
15 and talked to the Bureau. The Bureau suggested to us hold off
16 your settlement and wait till the matter is designated for
17 hearing and then you can follow the procedure which is what we
18 did follow. Because as Your Honor has mentioned, that is the
19 practice, has been the practice. And it's not only the
20 practice, it's reflected in published decisions of the
21 Commission and the subsidiary bodies.

22 Mr. Schonman's argument goes back to the merits I
23 believe of my proposal. I do not agree with Mr. Schonman's
24 reading of that rule. That rule was adopted -- that he read
25 to you was adopted I think in the late-'50s or early-'60s.

1 The only case that we could find that interprets that rule is
2 this -- a 1961 case which, you know, he -- Mr. Schonman
3 brought up. That's 40 years ago, Your Honor, more than 40
4 years ago. Since that time, the Commission rightly or wrongly
5 has interpreted that rule differently than
6 Mr. Schonman -- the interpretation Mr. Schonman has given you.

7 The Commission has not interpreted, and I'm talking
8 about the Commission now, not the Bureau, not the Review
9 Board, not a judge, the Commission has not interpreted that
10 rule to mean what Mr. Schonman says. We cited a case in our
11 brief --

12 JUDGE STIRMER: What case is that?

13 MR. PAPER: "Los Americas," that's one case. I
14 mean, that was just one case, but I'll give you the citation,
15 it's right here. 5 FCC Record 1634, 1637 to 38. In that
16 case, that was not a -- that was a case that's slightly
17 different, but that was a case involving -- Your Honor, may
18 recall, was a case that was handled by Judge Miller involving
19 Newark where as part of the settlement an applicant decided to
20 switch communities of license from Newark to Jersey City. A
21 change that under, under ordinary circumstances would have
22 been -- would have required that the application be returned
23 to the processing line. It's the same principle. And the
24 Commission there went on to explain that just what Your Honor
25 has stated, that the principle is different when you have

1 post-designation amendments.

2 I also disagree very vehemently with
3 Mr. Schonman about whether or not public notice has been
4 given. The Commission has rules set forth in Section 1.4 of
5 its rules that govern -- that define what is public notice,
6 and the rule could not be any clearer. In a nonrule-making
7 proceeding such as this, regardless of whether the item is
8 published in the Federal Register, public notice is provided
9 by the release date of the document, when the document is
10 released to the public. You issued an order approving the
11 settlement which accepted our amendment. That document was
12 released on July 25. Now, granted that's not the typical way
13 in which predesignation applications and amendments are put on
14 public notice. In a predesignation setting, of course they're
15 put on a document that's labeled "Public Notice." But that's
16 -- we're not talking about a predesignation situation and this
17 is how the Commission itself has defined public notice. And
18 what Mr. Schonman is saying is we don't care -- in effect he's
19 saying we don't care what our rule says, this is not the kind
20 of public notice that we think people should have. We don't
21 think people should be -- public notice should be given to
22 amendments in this way. Well, that may be a good policy
23 decision or it may not be, I don't know. That's not the way
24 the rules currently read. And I think what's driving this,
25 Your Honor, is -- and this from my conversations with the

1 Bureau, the Bureau has a sense of what is -- they're looking
2 at what the right result is rather than interpreting their own
3 rules. And I said -- I don't want to get sidetracked on too
4 much of an argument, but Mr. Schonman's argument or position
5 forces me to, is that the rule -- the Commission has rules.
6 The Commission should not be looking at whether the rules
7 produce a just result. The Commission has to follow its
8 rules. If the Commission decides that the, that the rule has
9 produced in a particular case or particular cases a bad result
10 from a policy perspective, the Commission should change the
11 rule prospectively. But the Commission can't look backwards
12 and say we don't like what's happened with our rule.

13 But I go beyond that. It is totally preposterous,
14 Your Honor, to suggest that this rule was designed to say to a
15 party such as Santa Monica, oh, yes, you can resolve your
16 difference with Living Way and get rid of them and you can go
17 back to the processing line and expose yourself to some more
18 competing application in another hearing. It doesn't make
19 sense, Your Honor. I think that the rule was designed to
20 address a situation which is not present here in which a party
21 doesn't for whatever reason want to go back to the processing
22 line. In fact, there's another amendment -- rule section in
23 here, I forget the number, which specifically authorizes a
24 judge to allow a party to withdraw an amendment if it, you
25 know, would constitute a major amendment and kick it out of

1 the hearing.

2 So, I say to Your Honor, but here's the bottom line
3 to this. I don't ask Mr. Schonman to agree with me. We've
4 had this discussion, Your Honor, so -- and we know he won't.
5 But this goes back to the merits of my proposal, because I
6 don't think that this matter should be decided by these kinds
7 of positions being articulated for example to the Commission
8 without giving the parties an -- especially in this case,
9 Santa Monica, an opportunity to comment to the, to the
10 Commission and be able to express our view point.

11 JUDGE STIRMER: I don't think this matter should go
12 to the Commission. I think the staff should make an initial
13 determination of what should be done with that application
14 that's pending before them.

15 MR. PAPER: But, Your Honor, if I could interject.
16 One way or the other this is a thing that's got to go to the
17 Commission because it would not be fair to us to say if the,
18 if the Bureau -- let's suppose the Bureau designates KLON's
19 application. Let's suppose that's a decision they make and
20 suppose they make that decision without going to the
21 Commission. Well, it seems to me unfair given the nature of
22 this situation. We have a settlement agreement which has been
23 approved by you in an order which has now become final and by
24 law, by law, not by statute and, and the Commission's rules
25 and every decision the Commission has ever issued, nobody has

1 a right to reconsider that decision and change that -- your
2 approval of that settlement agreement. So, what I'm saying is
3 I as representing Santa Monica, we should have an opportunity
4 -- before we start going down the road of having a hearing, I
5 should have an opportunity to test that Bureau decision before
6 we go to the hearing and not after we go to the hearing. It
7 would seem to me -- really, I hate to use this trite phrase,
8 but really a gross miscarriage of justice to say that we have
9 to go to a hearing before we can ask the Commission to rule on
10 that issue as to whether this application should be designated
11 with us and force us into a hearing. And I'm saying the way
12 that, the way that we get to that Commission to make that --
13 rule on that issue whether there should be a hearing at all
14 whether this application should be designated --

15 JUDGE STIRMER: Well, you see, Mr. Paper, I don't
16 think that's going to expedite the resolution of this matter.
17 I think the matter will be expedited by having the Bureau
18 immediately process this application and make a determination
19 of whether or not it's mutually exclusive with your
20 application and if so to designate it immediately for hearing.
21 And we will go to hearing as quickly as my document permits
22 and we will get a resolution of a comparative case and you can
23 pursue whatever remedies you want outside of that hearing
24 context. But this will be resolved if it's placed before me
25 quickly. Your recommendation if you lose, you could be

1 | looking at two or three years down the road and you still have
2 | a pending application.

3 | MR. PAPER: Well, Your Honor, with all due respect,
4 | I don't think that's fair. I don't -- first, I think that
5 | would really be a gross miscarriage of justice to say that you
6 | have approved a settlement agreement that has become final
7 | that is not subject to review and yet I still have to go
8 | through a hearing and, and all the time and expense. Your
9 | Honor, this --it's not going to save that much time because
10 | you're going to have to have a hearing although I appreciate
11 | your commitment to expedite it and I'm confident you can do
12 | that, you're certainly obviously capable of doing that and
13 | doing it well. But that's asking the parties to expend a lot
14 | of time and money both -- and I, and I tell you that it's not
15 | going to resolve issues because then if it goes up to the
16 | Commission, then if it goes up to the Commission, it, it --
17 | then it becomes a little more jumbled. Then we have a lot of
18 | other -- a lot of other issues will become involved, 307(b) --

19 | JUDGE STIRMER: No, it becomes less jumbled because
20 | you're going to have a determination of who's the comparative
21 | winner and that's going to resolve the conflict between the
22 | two applications, if there is a conflict. If I use your
23 | suggestion, Mr. Paper, and follow me on this, I issue an order
24 | granting your application, somebody then appeals and it goes
25 | to the Commission eventually, it could sit there for months

1 and months and months and possibly years before anybody acts
2 on that appeal and finally decides whether or not I was
3 correct in granting your application. If they rule that I was
4 incorrect, comes back again and we start all over. So, where
5 has that gotten you?

6 MR. PAPER: Well --

7 JUDGE STIRMER: This way, if they act and process
8 the application and determine it's mutually exclusive, I'm
9 confident we can have a hearing and the case decided in four
10 months, or five months.

11 MR. PAPER: But then you see what will happen, Your
12 Honor, is -- here's what will happen.

13 I -- with all due respect I disagree that it will save time
14 because if we take -- we have a discrete issue now about
15 whether or not this application should be designated for
16 hearing. That's the only issue. It's a very discrete legal
17 issue. If that issue goes up, I think we can safely say that
18 if you make the decision that I'm suggesting, that matter can
19 be certified to the Commission right away, it can bypass the
20 Review Board.

21 JUDGE STIRMER: There's no certification. I have to
22 issue an order --

23 MR. PAPER: Right.

24 JUDGE STIRMER: -- and then someone appeals.

25 MR. PAPER: Right.

1 JUDGE STIRMER: There's no certification.

2 MR. PAPER: Right, and then the matter can be
3 certified -- you know, I'm sure with all parties' concurrence
4 to the Commission. But again, you issue a decision, it goes
5 to the Review Board -- it's appealed to the Review Board by
6 KLON and then it can be certified up to the Commission because
7 I presume at that juncture we'd have a discrete legal issue
8 and then everybody can join in a, in a motion to have the
9 matter certified.

10 However, if you -- we follow the course suggested by
11 Your Honor what will happen? No matter how much you try and
12 expedite a hearing, it takes some time, you have to have --
13 well, you know, I don't have to explain this to you.

14 JUDGE STIRMER: Do you honestly believe that if I
15 issue an order that the Commission is going to act on that
16 appeal? First it has to go to the Review Board I would
17 assume. Do you think that it can run the gamut of appeals
18 quicker than I can decide a comparative case?

19 MR. PAPER: Well, in fact, I'd explain it this way,
20 Your Honor. I'm suggesting I believe -- we're taking a crap
21 shoot in a way because nobody knows precisely what would
22 happen, but my knowledge of Commission procedures is this is
23 what will happen. This is my guess. I don't make decisions
24 and so I don't control it. But my guess is what would happen
25 is you make your decision, the appeal is taken to the Review